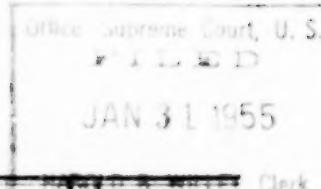


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Supreme Court of the United States

OCTOBER TERM, 1954

No. 250

ANTHONY TONY SICURELLA,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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[NOTE: Unusual length of this reply brief for petitioner is not due to repetition of argument made in the main brief. In its brief respondent went out of the record and injected a speculative reliance by the appeal board on "theocratic warfare," presented for the first time in these proceedings. This required an entirely new argument for petitioner that could not be anticipated and put in petitioner's main brief. Also, respondent misinterprets various publications of Jehovah's Witnesses, which necessitates quoting them at length. Some of these have been printed as appendixes to this reply brief. Hence the length of this reply brief is entirely justified by the position taken by respondent.]

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MAY IT PLEASE THE COURT:

The points in the brief for the United States that need replying to will be considered in the order in which they are stated in that brief. There are some fundamental errors underlying the entire brief that need to be mentioned first.

I.

FUNDAMENTAL ERRORS.

The respondent has completely omitted a discussion on the second question presented by the petition. The question is whether the recommendation by the Department of Justice, that petitioner's belief in self-defense was the ground for a denial of the conscientious objector status, was legal. This point is not out of the case, regardless of what may be said about the first question in the petition. The question about the illegal recommendation stays in. Reliance by the appeal board upon this erroneous theory of law invalidated the classification.—*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (now pending on certiorari, No. 447, October Term, 1954); *Hinkle v. United States*, 9th Cir., 1954, 216 F. 2d 8 (now pending on certiorari, No. 448, October Term, 1954); *Clementino v. United States*, 9th Cir., 1954, 216 F. 2d 10; *Batelaan v. United States*, 9th Cir., Dec. 17, 1954, — F. 2d —; *Shepherd v. United States*, 9th Cir., Dec. 13, 1954, — F. 2d —; *Affeldt v. United States*, 9th Cir., Dec. 14, 1954, — F. 2d —; *Clark v. United States*, 9th Cir., Dec. 3, 1954, — F. 2d —; *Goetz v. United States*, 9th Cir., 1954, 216 F. 2d 270; *United States v. Bortlik*, M. D. Pa., 1954, 122 F. Supp. 225; *United States v. Sage*, D. Neb., 1954, 118 F. Supp. 33.

The respondent has illegally imported a new question into the case that was not considered by the Department of Justice, the appeal board or the lower courts. It is that beliefs of petitioner in theocratic warfare bar him from classification as a conscientious objector. This same argument was urged upon this Court in *United States v. Taffs*, No. 576, October Term, 1953; certiorari denied 347 U. S. 928 (1954). The contention was not considered to be of sufficient merit to authorize a review in that case. As will be shown later the position still has no merit. But it has no

position in this case, because neither the draft boards nor the courts below relied upon it. This Court, therefore, ought not to consider the argument at this time and broaden the issue beyond what it was in the court below.

The appeal board wrote no reason for its denial of the conscientious objector status. The Department of Justice wrote a letter to the appeal board and stated its one and only reason for which the status should be denied to the petitioner. Under the doctrine of regularity of administrative proceedings it is presumed that the appeal board limited its denial to this stated reason. (*United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (pending on certiorari, No. 447, October Term, 1954); *Clementino v. United States*, 9th Cir., 1954, 216 F. 2d 10; *Shepherd v. United States*, 9th Cir., Dec. 13, 1954, — F. 2d —; *Affeldt v. United States*, 9th Cir., Dec. 14, 1954, — F. 2d —; *Batelaan v. United States*, 9th Cir., Dec. 17, 1954, — F. 2d —) This Court must speculate illegally along with the respondent that the appeal board based its denial upon the belief in theocratic warfare. This is especially true where the appeal board made no memorandum and only one reason was stated by the Department of Justice in its recommendation. (*United States v. Hagaman*, 3d Cir., 1954, 213 F. 2d 86; *Ypparila v. United States*, 10th Cir., Dec. 22, 1954, — F. 2d —; *Reel v. Badt*, 2d Cir., 1944, 141 F. 2d 845) Courts cannot speculate on what is basis in fact.—*Dickinson v. United States*, 346 U. S. 389 (1953).

It is submitted that this Court ought not to follow the respondent out of the record and speculate to consider whether the appeal board relied upon a belief in theocratic warfare as a basis for denial of the conscientious objector status.

The entire argument of respondent consists of an analysis and weighing of the religious views and reasons of Jehovah's Witnesses for their objection to participation in military training and service. The respondent uses many pages of its brief in an effort to get this Court to act as a

religious hierarchy to determine what is orthodox in the field of religious conscientious objections to war. This Court cannot weigh, evaluate and compare religious beliefs.—*United States v. Ballard*, 322 U. S. 78, 85-88 (1944); *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 727, 728-729 (1871); *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952).

In describing the religious beliefs of Jehovah's Witnesses to the Court, the respondent has misinterpreted them. Respondent has culled out of the articles published in *The Watchtower* parts here and there. It then takes them out of their context and places a false meaning upon them. Specific instances of this will be shown later. The plain meaning of the articles from their four corners cannot thus be perverted by this illegal method of considering documents.—*United States v. One Book Ulysses*, 2d Cir., 72 F. 2d 705; *Schaefer v. United States*, 251 U. S. 466, 482 (1920).

The record and the publications relied upon by respondent do not support what it has told the Court. They contradict what it stated about the beliefs of petitioner. The documents show genuine conscientious objection to participation in military service.

In several parts of its brief the respondent recognizes the presence of the word "participation" in the statute. But the over-all impression obtained from respondent's brief is that little or no importance is given to the word. It seems that respondent has read the statute so as to omit completely the word "participation." With this vital word left out of the statute the meaning is changed to support the interpretation given to it by respondent. Respondent reads the statute so as to make the objections apply to war and all wars and not to *participation* therein. But when the word "participation" is put back into the statute, where Congress put it, the conscientious objection is seen to be limited to direct participation in military training and service. In this position petitioner, who objects to "participation," comes under the law. The objection need not extend

to war or to all wars, but only to *participation* therein.—*Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897.

II.

QUESTION UNDULY LIMITED.

The respondent limits the question to whether there was basis in fact for the denial of the conscientious objector status. (See page 2 of respondent's brief.) There is also presented to this Court for determination another question. (See page 2, *supra*, this reply brief.) It is whether the recommendation that belief in self-defense was a basis in fact for the denial of the conscientious objector status violated petitioner's rights to procedural due process of law. See *Shepherd v. United States*, 9th Cir., Dec. 13, 1954,—F. 2d —, where it is said: "We think that a hearing before a Department of Justice proceeding upon an erroneous theory as to what constitutes opposition to 'participation in war in any form,' is no better than no hearing at all." That quotation applies here and presents to this Court the second question for consideration. It is one of denial of procedural due process and not one of classification as contended by respondent.

III.

COMMENTS UPON THE STATEMENT OF FACTS.

In footnote 2, page 6 of respondent's brief, petitioner is said to be inconsistent in giving his employment while attending high school as a full-time student. [R. 51-53, 78-79] There was no inconsistency, because obviously he had the job after school hours. It is speculation to say that the board relied on this. No mention is made of it by the boards or by the hearing officer. The issue of good faith of

petitioner on this or any other ground was never challenged by the administrative agency.

In footnotes 3 and 7, pages 6 and 10, respondent emphasizes the difference in dates of ordination. These differences related to the ministerial claim, which is not involved here. They are not material to the conscientious objector claim. Neither the boards nor the Department of Justice raised any point about these differences. It should be remembered that the sincerity of petitioner as a conscientious objector was not challenged. The denial of the status was based solely upon petitioner's belief in self-defense. It is too late to raise this point for the first time. It requires illegal speculation to consider this as basis in fact.

Emphasis is placed upon the statement in the questionnaire about the physical condition of petitioner. (See page 7 of respondent's brief.) This was not considered by the boards or the Department of Justice. It is not shown that what he stated was false. Just because he was accepted for service on physical examination does not prove these answers false. This fact is immaterial to the question to be considered by the Court. The fact that he did not claim Class IV-F is significant of his good faith.

In footnote 5, page 7 of respondent's brief, it is implied that petitioner did not appear at the hearing. This suggestion is contrary to the draft board practice. The board must indicate in the minutes a failure to appear. (*United States v. Hufford*, M. D. Pa., 1952, 103 F. Supp. 859) The showing in the minutes on the date for the appearance that a letter was written to the State Headquarters of Selective Service about Jehovah's Witnesses proves that he did actually appear.

Emphasis is placed (pages 8 and 9 of its brief) by the respondent upon the failure of petitioner to indicate in the questionnaire and early papers that he claimed conscientious objections. Petitioner explained why he did not timely request a special form for conscientious objector. [R. 19] While a formal request for the form was not made until

February 5, 1951, he had previously indicated to the board that he was a conscientious objector. [R. 69-70, 72, 73, 74] According to the draft board practice it is not necessary to sign or file a special form for conscientious objector. If the objection appears in any answer or paper it is the board's duty to consider it.—See Local Board Memorandum No. 41 at pages 29-30 of petitioner's main brief.

The respondent is in no position to claim or suggest a waiver of the conscientious objector claim or lack of good faith. The local board waived the late filing when it gave him the form and later reopened and reconsidered his case with the form in the file. (*United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210; affirmed on petition for rehearing, 1954, 216 F. 2d 681) Neither the boards nor the Department of Justice relied upon the tardy filing of the claim. It is too late for respondent to suggest it now. The suggestion is not relevant because the good faith of petitioner is not an issue in this case.

The respondent places emphasis (pages 10 and 11 of its brief) on petitioner's appealing to the appeal board for a ministerial classification and not mentioning his conscientious objector status. Under the regulations the appeal board must consider the case *de novo*. It is unnecessary for a registrant to assign all the claims he is making in his appeal. (*Tung v. United States*,) 1st Cir., 1944, 142 F. 2d 919; *Cox v. Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93) Appeals are informal and registrants are not to be treated as though they are litigants represented by counsel.—*Tung v. United States, supra*; *Berman v. Craig*, 3d Cir., 1953, 207 F. 2d 888, 891.

IV.

CLAIMED MISINTERPRETATION OF SELF-DEFENSE.

It is stated (pages 13, 15-17, 25 of respondent's brief) that petitioner considers the denial of the conscientious objector status and the approval thereof by the courts below to be because of his "personal" self-defense. Perhaps petitioner was not so clear as he should have been in his main brief. Petitioner did not and does not limit his argument to "personal" self-defense. He extends his assault against the determinations to employ the word "self-defense" in its broadest sense and in the sense that is commonly known. In this sense the word "self-defense" includes, therefore, the right to defend, in addition to oneself, a wife, a child, a brother, a Christian brother, one's property or a church.

Petitioner argued in his main brief and he argues here that he was denied the conscientious objector status, and the courts below approve such denial, because the record shows his willingness to defend himself as well as his brothers and his church. Neither the Department of Justice nor the courts below held that personal defense of oneself was no basis in fact for a refusal of the status. No distinction of disclaimer of reliance upon personal self-defense was made by the Department of Justice or the court below. The denial of the status was based upon both personal self-defense and general self-defense, including defense of the church.

The Department of Justice based its denial on personal defense and defense of others. The use of "in defense of his ministry" by the Department included personal self-defense. [R. 101] When it employed the words "in defense of his fellow-brethren" the Department showed that it included his above-stated personal defense as well as the defense of others in the faith. [R. 101] The full answer of petitioner about self-defense and defense of others should be read by this Court. [R. 77, 82] This answer is in accord-

ancee with the official organ of Jehovah's Witnesses.—See pages 62-63 of respondent's brief.

The court below used the term "self-defense" to include "personal" self-defense as well as defense of others. [R. 112-113] It held that each "is incompatible with a claim of conscientious objection to participation in war" and that petitioner's statements on the subject are "an appropriate factor for the board to consider when ruling on his claim." [R. 113]

Since neither the Department nor the court below isolated personal self-defense from willingness to defend others it is impossible for the respondent to do it here for the first time. But assuming that personal self-defense can be isolated, it is immaterial and makes no difference.

In a similar case this Court has considered whether a general verdict of guilt is illegal because it was based on erroneous parts of a general charge. It has said that the possible proceeding on an erroneous theory could not be isolated from the good in order to sustain the verdict. The Court reversed in such situations.—*Stromberg v. California*, 283 U. S. 359 (1931); *Terminiello v. City of Chicago*, 337 U. S. 1 (1949).

"We think that a hearing before a Department proceeding upon an erroneous theory as to what constitutes opposition to 'participation in war in any form,' is no better than no hearing at all."
—*Shepherd v. United States*, 9th Cir., Dec. 13, 1954, — F. 2d —.

It should be remembered that judicial review is narrow and strict in draft cases. There must be a strict compliance with procedural due process, prohibiting proceedings upon erroneous legal theories.—*N. L. R. B. v. Cherry Cotton Mills*, 5th Cir., 1938, 98 F. 2d 444, 446; *United States v. Zieber*, 3rd Cir., 1947, 161 F. 2d 90; *Bejelis v. United States*, 6th Cir., 1953, 206 F. 2d 354; *Walker v. United States*, 6th Cir., 1953, 206 F. 2d 354; *United States v. Graham*, N. D. N. Y., 1952, 108 F. Supp. 794.

Petitioner does not agree to the attempted narrowing of the issue of self-defense in order to exclude consideration of self-defense, since neither the agency nor the courts below excluded personal self-defense from view. But even if it were excluded, petitioner still stands by every argument that is made by him on personal self-defense. It is as applicable to his right to defend others, showing he should not lose his conscientious objector status.

Neither the law of the land nor the law of God limits the right of defense to personal self-defense. Congress did not make any such limitation. In the absence of something specific in the act segregating personal self-defense from general self-defense, it cannot be done by the Court. That would be judicial legislation contrary to the principle of "equal justice under law."

V.

CONFUSION OF UNWILLINGNESS TO PERFORM CIVILIAN WORK IN THE NATIONAL INTEREST.

The respondent erroneously argues that petitioner misinterpreted the holding of the court below concerning petitioner's refusal to do civilian work. (See pages 16-17 and 32-37 of respondent's brief.) Petitioner has stated that the court below found basis in fact for denial of the conscientious objector status because he objected to performance of civilian work "that substitutes for military service." [R. 113] The refusal to do civilian work because petitioner was "no part of the world" [R. 78, 82-83] was basis for the statement by the court below that petitioner objected "to any and all obedience to secular authority." [R. 113] It is plain that the interpretation placed upon the holding of the court below by petitioner is correct. The construction put by respondent on the holding is wrong.

The position taken by respondent is inconsistent with the view taken by the Department of Justice in its recommendation to the appeal board. In such recommendation

the refusal to perform civilian work was not raised. It was not involved in the administrative proceedings. The Court must speculate to say that the draft boards relied upon this belief of petitioner. It should not be considered here for that reason.

Should the Court consider the argument here, notwithstanding the failure of the administrative agency to rely upon it, what petitioner has said in his main brief answers, in a general way, the argument made by respondent.—See main brief of petitioner, at pages 32-40.

VI.

MISCONCEPTIONS IN RESPONDENT'S POINT FOR ARGUMENT.

In its point respondent says that the objection of petitioner "to war is not total but is subject to reservations." (See the brief, page 17.) This statement is completely erroneous. If given any weight it will result in the Court's being misled and the petitioner's being denied "equal justice under law." Petitioner's willingness to use force to defend himself and "kingdom interests" does not mean he will serve in the armed forces of any nation. The contrary appears, as will be shown later. It appears that he will not engage in carnal warfare in Jehovah's army. The record shows that he has bona fide religious objections to military training and service. The respondent has not denied this. But by religious rationalization and misinterpretation of the record and of petitioner's religious beliefs the false contention is made in the point. The erroneous part of the point should be disregarded.

It is also stated in the point that petitioner's primary objection is "directed against interference with" his "religious activity." This is not a fair statement and is a misinterpretation of petitioner's full statements appearing in the record. The over-all conscientious objection included this ground but was not limited to it. He based his objection on other grounds appearing in the record. But these have

been illegally ignored by respondent in its point for argument. The total beliefs of petitioner, mentioned later in this brief, should be considered.

VII.

STATUTE DOES NOT EXTEND TO OPPOSITION TO WAR BUT CONFINES IT TO OBJECTION TO PERSONAL AND DIRECT PARTICIPATION IN MILITARY TRAINING AND SERVICE.

It is stated that the act limits conscientious objector status to those who are "specifically and unconditionally opposed to any form of warfare." (See page 17 of respondent's brief.) The respondent fails to state that the objection mentioned in the statute extends no further than to "participation in" warfare. The act "specifically and unconditionally" confines the objection to direct "participation" in military training and service. With emphasis placed on "participation" the true meaning is obtained.

Along with the legislative history that is in footnotes 10, 11, 12, 13 and 14, on pages 18-22 of respondent's brief, the Court is requested to read the legislative history appearing at pages 38-39 of petitioner's main brief. Read also the legislative background material appearing in the brief for petitioner in *Gonzales v. United States*, No. 69, October Term, 1954, at pages 28-30. When the brief was written in each of the three cases to be argued along with this case the *Gonzales* case was first on the calendar. But since then counsel agreed on placing this *Sicurella* case first for argument. This shift in the calendar arrangement makes necessary the reference to material in the *Gonzales* case.

The legislative material citing *Berman v. United States*, 9th Cir., 156 F. 2d 377, 382, referred to at the top of page 20 of respondent's brief shows a congressional intent to confine the conscientious objector privilege to "religious training and beliefs." It was because of this that Congress defined religious training and belief. It said: "it means an

individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation." It is significant that the facts in petitioner's case bring him squarely within the provisions of the part of the act quoted here.

The citation of *Berman v. United States*, 9th Cir., 156 F. 2d 377, 382, by the congressional committee in its report, was merely for the purpose of showing that the committee disapproved *United States v. Kauten*, 2d Cir., 1943, 133 F. 2d 703, which permitted a political objector to claim the benefits of a conscientious objector. Because of this the Congress amended the language of the 1940 act by adding that religious training and belief "does not include essentially political, sociological, or philosophical views or a merely personal moral code." The United States Court of Appeals for the Ninth Circuit has said that the conscientious objections of Jehovah's Witnesses are not a "merely personal moral code" but are based on "religious training and belief."—*Blevins v. United States*, No. 14,189, Nov. 26, 1954, — F. 2d —.

The respondent states (footnote on page 22 of its brief) that "members of Jehovah's witnesses would not be entitled to exemption if this provision of the 1917 act had remained in effect." This is not a correct statement in view of the provisions of that act quoted immediately before such statement. The reason is that their "religious convictions are against . . . participation" in war, which was the alternate provision of that law. It should be remembered that Jehovah's Witnesses were officially classified as conscientious objectors under the 1917 act. Since they were also opposed to noncombatant training and service, as well as combatant service, they suffered in military prisons.—Read the report by Harlan F. Stone for the Board of Inquiry to President Wilson. See also *The Watchtower* of January 15, 1918, appearing as Appendix A to this brief.

The 1940 act and the present act provided for an elimination of the "convictions . . . against war" and based the

status on objection to participation in military training and service, combatant and noncombatant, based on religious training and belief. Jehovah's Witnesses were squarely within the conscientious objector terms of the 1917 act, as well as the present law.

The quotation in the footnote on page 22 of respondent's brief from *Conscription of Conscience*, referring to a statement by the president of the legal governing body of Jehovah's Witnesses, does not present the whole truth. Jehovah's Witnesses had declared their conscientious objections to participation in war. (See the pamphlet *Neutrality*, Appendix B, accompanying this brief, published in 1939 by the Watchtower Bible and Tract Society.) The whole truth and nothing but the truth about the views of Jehovah's Witnesses, as conscientious objectors, was presented in an important letter to the Department of Justice from general counsel for Jehovah's Witnesses. A copy of that letter as published in *Consolation* magazine on October 30, 1940, is printed as Appendix C, pages 43-59, below, this reply brief. Many copies of this magazine reprint of the letter are in the conscientious objector hearing files of the Department of Justice.

The statement made by the president of the Watchtower Society, referred to in the footnote on page 22 of respondent's brief, is fully explained in the letter to the Department of Justice (Appendix C) under the heading "Selective Draft." The statement from *Conscription of Conscience*, referred to by respondent, was not that Jehovah's Witnesses did not have conscientious objections. It was that Jehovah's Witnesses were not told what to do if, as and when they were ordered to do military or civilian service under the act. Had the president said that the governing body gave "any instruction or command" as to "any particular course of action" to take, it would have stated falsely that the society and its officers had violated the conspiracy section of the act. (See *Gara v. United States*, 6th Cir., 1949, 178 F. 2d 38; affirmed per curiam 340 U. S. 857 (1950); and

Baxley v. United States, 4th Cir., 1943, 134 F. 2d 610.) The statement referred to in the footnote of respondent's brief does not suggest the true attitude of the legal governing body of Jehovah's Witnesses.

The statement made by respondent on page 23 of its brief that "general unwillingness" is no basis for conscientious objection is correct only if religious training and belief is omitted. If objection is based on religious training and belief in the Supreme Being it would be a valid objection under the act, even though a "general unwillingness" to leave religious pursuits may be included in the objection.

The statement at the bottom of page 23 of respondent's brief about "whose objection to war is conditional" is not entirely accurate. If a person has no objection to God-directed wars in the Bible but maintains staunch conscientious objections to participation in all wars between the nations of this evil world, based on religious training and belief in the Supreme Being, then such "conditional" objection does not forfeit his legally secured conscientious objection to participation. Certainly Congress did not mean that the Christian conscientious objector must violate his faith and belief in the wars that God has approved in His Word, the Bible. The Christian does not have to oppose Scriptural warfare.

VIII.

ERRORS IN SAYING PETITIONER'S STATEMENTS ABOUT SELF-DEFENSE AMOUNTED TO AGREEMENT TO PARTICIPATE IN WARFARE.

Respondent illegally and erroneously attempts to broaden the belief of petitioner in self-defense and defense of his Christian brothers into an agreement to participate in armed warfare. This is a gross misinterpretation of the record. Please read what petitioner told the board. [R. 77, 82] He was asked: "under what circumstances, if any, do you believe in the use of force?" He answered:

"Only in the interests of defending Kingdom interests, our preaching work, our meetings, our fellow brethren and sisters and our property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests and scripturally so. Because in doing so we do not arm ourselves or carry carnal weapons in anticipation of or in preparation for trouble or to meet threats.

R. 78] In doing so I try to ward off blows and attacks only in defense. I do not use weapons of warfare in defense of myself or the Kingdom interests. I do not retreat when attacked in my home or at meeting places, but will retreat on public or other property and shake the dust off my feet; so not giving what is holy to dogs and not throwing my pearls before swines. (Matthew 10: 14 & 7: 6) So I retreat when I can do so and avoid a fight or trouble. Also following the admonition at Acts 24: 16, which states 'In this respect, indeed, I am exercising myself continually to have a consciousness of committing no offense against God and man.' " [R. 82]

Concerning these quoted statements of petitioner, the respondent says that they "would involve more than individual self-defense, and contemplated such mass use of force as could be nothing less than warfare." (See the brief at pages 25-26.) Then (footnote 18 on page 26 of respondent's brief) respondent refers to a part of petitioner's above-quoted statement on the use of force about not using weapons. Respondent then defiantly states that petitioner did not mean what he said but probably meant something else. It is falsely suggested that petitioner would use force and weapons in "future outright warfare if the future 'Kingdom interests' are served by participation therein." This last statement in that footnote is flouting the holding of this Court in *Schaefer v. United States*, 251 U. S. 466,

482 (1920). There this Court condemned illegal governmental cutting up of a document and pasting it back together again, as in this case, in a different arrangement in order to produce a new and different meaning to support its argument, contrary to truth and the record.—See also *United States v. One Book Ulysses*, 2d Cir., 72 F. 2d 705.

The material appearing in the appendix to the respondent's brief at pages 62-63 correctly presents petitioner's views. There his position on self defense and defense of Kingdom interests clearly does not contemplate mass warfare or participation in any kind of mass rebellion. There it is stated that Jehovah's Witnesses "do not use weapons of warfare in defense of themselves or the Kingdom interests. (2 Cor. 10:4)" This part of appendix to respondent's brief impeaches what respondent says at pages 25-27 of its brief.

The position taken here by respondent is diametrically opposed to that taken by the Solicitor General in the petition for writ of certiorari in *United States v. Taffs*, No. 576, October Term, 1953; certiorari denied March 15, 1954, 347 U. S. 928. (See the quoted part of this petition at page 50 of the main brief for petitioner in this case.) In that petition the Solicitor General, on a draft board record identical to this, stated that the government took the position that such statements about self-defense and defense of the Kingdom interests were no basis for the denial of the conscientious objector status.

The record in the *Taffs* case shows that the same article from *The Watchtower* on theocratic warfare printed in the appendix to respondent's brief in this case was relied on. (See the *Taffs* record at pages 72-94.) Material identical to that which appears on pages 62-63 of respondent's brief in this case, concerning self-defense and defense of the Kingdom interests, appears on page 85 of the *Taffs* record.

In the special form for conscientious objector filed by petitioner in this case substantially the same statement on the use of force was made as was made by *Taffs* in his

special form. (See the *Taffs* record at page 58.) There it is stated:

"5. Under what circumstances, if any, do you believe in the use of force?

"When God authorizes me to fight with force. The Bible indicates four occasions in which a Christian may use force. 1. In defense of their ministry. 2. In defense of their fellow Witnesses. 3. In defense of his own life. 4. To protect his own home against crime or violence."

Respondent says in footnote 16, page 25, that personal self-defense is a "far cry" from defense of the Kingdom interests. From the brief in general and at these places in particular the impression is gained that respondent does not consider that self-defense is basis for a denial of the conscientious objector status. At least it is not argued at any place in the brief that personal self-defense is basis in fact for the refusal of the conscientious objector status.

The position taken by respondent concerning the difference between personal self-defense and willingness to defend others is unreasonable. Neither the law of the land nor the law of God limits the right of defense to oneself. It extends the right to the defense of one's family, church and Christian brothers. (See the argument, *supra*, at pages 8-10, under the heading "Claimed Misinterpretation of Self-Defense.") Unless and until Congress makes a split in the right of defense in order to take away defense of others and leave only personal self-defense for the conscientious objector, it cannot be done here. To do so would make judicial legislation contrary to law.

IX.

ATTEMPTS TO SEGREGATE AND MINIMIZE BIBLE QUOTATIONS SUPPORTING CONSCIENTIOUS OBJECTION IMPROPER.

It is stated by respondent (contrary to the record) that petitioner merely listed a half dozen scriptures to support his stand as a conscientious objector. Actually fourteen different scriptures are cited or quoted in the conscientious objector form, many of which consist of several different verses. [R. 77-83] Elsewhere other scriptures are cited and quoted. [R. 63, 69, 73, 89, 91] It is said that these scriptures related to his ministry. They were not expressly confined to the ministry claim. But even so they also supported his objections to military service that were conscientious. Under the Local Board Memorandum No. 41 (see pages 29-30 of the main brief) it was necessary for the board to consider these, even though they did not appear in his conscientious objector form. The draft boards are not to deal with a registrant as though he were a litigant represented by counsel.—*Berman v. Craig*, 3d Cir., 1953, 207 F. 2d 888, 891.

Respondent argues that petitioner is not a conscientious objector because he did not cite or quote the Bible verse from Exodus 20:13: "Thou shalt not kill." (See page 27 of respondent's brief.) This assumes that Congress has cut an orthodox path through the Bible and fixed the scriptures on which a conscientious objector should rely. Such argument is ridiculous.—See pages 28-29 of Brief for Petitioner, in No. 69, October Term, 1954, *Gonzales v. United States*, a companion case to this one.

At this point it is interesting to note the unfair addition and use of Exodus 23:31 by the respondent in footnote 19 of its brief on page 27. It is said that petitioner intended to rely on this because he cited Exodus 23:32. Each scripture deals with a different subject. The unreasonableness of this type of unfair argument is now demonstrated. Suppose petitioner should have above said that respondent

also should have cited Exodus 20:12, which deals with a different subject also. It requires petitioner to honor his father and mother. This scripture would be relevant argument against respondent if we are to adopt and pursue the unreasonable sophistry appearing in footnote 19 on page 27 of respondent's brief.

The respondent (pages 28-32 of its brief) roams into the forbidden field of judging religious beliefs. It criticizes the conclusions reached by Jehovah's Witnesses as a result of their religious training and belief.

The argument is that because petitioner and Jehovah's Witnesses do not have pacifistic beliefs like the peace churches, they are not covered by the law. The main reason for which this argument should be rejected is that it attempts to weigh the correctness of religious beliefs. This is outside the jurisdiction of the draft boards, the Department of Justice and the courts.—*United States v. Ballard*, 322 U. S. 78, 85-88 (1944).

The expression of the religious views of Jehovah's Witnesses by the legal governing body of the group, the Watchtower Bible and Tract Society, Inc., in the magazine *The Watchtower*, relied on by respondent, is an ecclesiastical determination. This religious administrative determination cannot be questioned in secular tribunals. It must be accepted as a genuine bona fide statement of conscientious objection to war. The ecclesiastical determination is binding on the draft boards, the government and the courts.—*Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952); *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 727, 728-729 (1871); *Gonzalez v. Archbishop*, 280 U. S. 1, 16-17 (1929).

The Court cannot compare this statement of belief with the pacifistic beliefs of other religions and thus determine whether the beliefs fit the statute. The 1940 act and the present act rejected the pacifism or peace-church definition of the 1917 act. To do this would convert the Court into a heresy tribunal. To reject religious beliefs on conscientious objection by comparison of Jehovah's Witnesses

with other religious beliefs is in violation of the First Amendment to the United States Constitution.

All that the Court can inquire about is confined to what the act says. An individual is a conscientious objector entitled to the benefits of the law if he shows (1) that he believes in the Supreme Being, (2) his belief imposes obligations higher than those owed to the state, (3) he opposes both combatant and noncombatant military service, and (4) his beliefs are not political, sociological or philosophical but are based on belief in God.

The quotation from *The Watchtower* (Appendix to respondent's brief at pages 44-76) and the other references to publications of Jehovah's Witnesses, on pages 30-32, do not present the full and true views of petitioner and Jehovah's Witnesses appearing in the documents quoted from.

The misunderstanding and misinterpretation of the record and views of Jehovah's Witnesses are shown in the use of the quotation from the magazine *The Watchtower*, at pages 28-32 of respondent's brief. The record and the publication relied upon by respondent do not support what respondent says about the publications. They contradict what respondent says. They should be read. They show genuine conscientious objection to participation in any war that is fought between the nations of this world.

The trouble with the argument of respondent in its consideration of the religious views of petitioner appearing in the publications is that it does not attempt to gather the meaning of each of the articles relied upon by petitioner from its entirety. Parts of the articles and bits of the record are cut away from their natural setting. Then a colored meaning, different from the true intent of the writer and speaker, is wrapped around the isolated pieces. This process of determining the meaning of written documents has been condemned.—*United States v. One Book Ulysses*, 2d Cir., 72 F. 2d 705.

It is the responsibility of a reader to judge a document not according to parts of the document that can be cut out

and considered apart from the context. The obligation of a judge is to ascertain the intent of the author after reading the entire document. The articles appearing in the magazine *The Watchtower* and the book *The New World* do not support the conclusion reached by respondent. Had the respondent applied the proper rule of law about interpretation of documents a different conclusion would have been reached.

The rule of proper interpretation of literature has been stated by Mr. Justice Brandeis in *Schaefer v. United States*, 251 U. S. 465, 482 (1920) :

“The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. In making such determination, it should be read as a whole.”

The wrong done by the above deliberate misinterpretation of what Jehovah's Witnesses believe is compounded by the epitome of a low grade of hearsay opinion or a miserably erroneous summary of the book entitled “The New World,” by the authors of *Conscription of Conscience*, quoted in footnote 23 on pages 30-31 of respondent's brief. The unfairness is exacerbated by the false statement that Jehovah's Witnesses say, in *The New World*, that they “can, without conscientious scruple, participate” in Armageddon. The best answer to this misinterpretation is to quote *The New World* itself. It states that the enemies of Jehovah God say that Jehovah's Witnesses will fight against the nations of this world. Then the book adds:

“To such let those foregoing words of the inspired apostle be the authoritative answer that the true Christians who witness for Jehovah and His new world are not fighting men and have no fight with them or their visible governments. The fight of Jehovah's witnesses is now and ever since

the days of Abel has been with the demons, the promoters of religion.

* * *

"Has the Job class [Jehovah's Witnesses] an 'arm like God' to fight the battle of Armageddon and to abase the proud, tread down the wicked, and hide their carcasses in the dust? If so, then, says Jehovah, 'will I also confess unto thee that thine own right hand can save thee.' ([Job] 40: 9-14) The Job class cannot break the power of this world and overthrow it; they cannot destroy the 'beast' or his 'image' or the Papal Hierarchy machine, nor save themselves from Satan's organization. It is Jehovah's arm and his 'right hand,' Christ Jesus, that deliver them from the demon rule and the nations gone totalitarian. Armageddon is HIS battle for the vindication of his name, and no creatures on earth will fight it for him. The remnant and their companions must depend and wait upon the vindication of Jehovah's name by the execution of all enemies. The Job class cannot by their own power crush the persecutions, oppositions, and violence by the religionists and allies. At the same time, to try to escape the fiery furnace of affliction by bargaining with the enemy and compromising with the world, God's enemy, would bring them under demon influence and under Jehovah's sentence of destruction. Almighty God is the only Deliverer, by Christ Jesus, and he delivers primarily for his name's sake those who keep integrity."—*The New World*, Brooklyn, N. Y., Watchtower Bible & Tract Society, Inc., 1942, pp. 51-52, 313-314.

Nine copies of this book, *The New World*, are being filed with the Clerk of this Court as Appendix D to this brief, for the consideration of the Court.

It is therefore to be seen that the statement appearing at the top of page 31 of respondent's brief, that the literature is "to establish the Jehovah's Witness as one who does not oppose war but simply reserves the right to determine which war is the one of which Jehovah approves" for their participation in flesh and blood killing, is patently untrue.

On page 24 of its brief respondent says that it "would not urge denial of petitioner's status as a conscientious objector if his utterances disclosed nothing more than a willingness to participate in some hypothetical spiritual conflict of Jehovah and his angels against Satan." This statement attempts to lead this Court to the belief, as does also the misleading footnote 23 above discussed, that petitioner and Jehovah's Witnesses contend that they will participate in the battle of Armageddon.

Jehovah's Witnesses and petitioner do not believe that they will participate in the warfare at Armageddon. They merely stand still, turn not a hand but sing the praises of Jehovah, as when Jehovah caused Moab, Ammon and Mount Seir to be destroyed, and when Gideon and his band surrounded the host of Midian. (2 Chronicles 20; Judges 7) Then they watch the destruction of Jehovah's enemies, Satan and his supporters, at Armageddon. (See the quotation from *The New World, supra*, pages 22-23.) This is also shown in the appendix to respondent's brief in this case, at pages 40-76.—Read the summary appearing in the brief for petitioner in *Witmer v. United States*, No. 164, October Term, 1954, at pages 29-32.

The precise nature of the participation by Jehovah's Witnesses in theocratic warfare (present preaching and legal fighting to preach) and their part in Armageddon is also shown in *The Watchtower*, issue of November 15, 1954, at pages 684-703. This issue of the magazine accompanies this reply brief and is identified as Appendix E.

"¹⁵ . . . This spiritual priesthood may not sanction their engaging in violent combats among themselves at the temple of Jehovah God or en-

gaging in violent combat with outsiders at the battle of Armageddon.—Hag. 2:7-9, AS; Jas. 4:1-4.

"¹⁶ Our joint warfare must accordingly be a spiritual warfare. And for this both flocks of us must take up the same God-given suit of armor in obedience to the command: 'Stand firm, therefore, with your loins girded about with truth, and having on the breastplate of righteousness, and with your feet shod with the equipment of the good news of peace. Above all things, take up the large shield of faith, with which you will be able to quench all the wicked one's burning missiles. Also accept the helmet of salvation, and the sword of the spirit, that is, God's word, while with every form of prayer and supplication you carry on prayer on every occasion in spirit. And to that end keep awake with all constancy and with supplication in behalf of all the holy ones, also for me, that ability to speak may be given me with the opening of my mouth, with all freeness of speech to make known the sacred secret of the good news, for which I am acting as an ambassador in chains, that I may speak in connection with it with boldness as I ought to speak.'—Eph. 6:14-20, NW.

"¹⁷ With this suit of armor you can now be a peaceful resident of earth, harming no blood and flesh, and at the same time carry on a theocratic spiritual fight against the wicked spirit forces in the heavenly places that use their earthly human dupes to try to stop freeness of speech in preaching the good news with boldness. The 'sword of the spirit,' or spiritual sword, is God's Word. With it you can do no bodily violence to anyone, but, instead, immense spiritual good. A Korean War general recently said, 'The pen is mightier than the sword,' meaning the literal

sword. In turn the Word of God is mightier than the pen of worldly men, and hence is mightier than the literal sword. The apostle Paul also said that the alive Word of God ‘exerts power and is sharper than any two-edged sword.’ (Heb. 4:12, NW) Why, then, should we who are sanctified to the sacred, theocratic warfare lift up a less mighty, an inferior weapon against one another any more? Why should we not use the mightier sword, the superior weapon, the spiritual sword, the Word of God, against our common enemy, the ‘wicked spirit forces in the heavenly places’? Our mightiness in war lies in weapons from God, and these only we may use.

* * *

^{“¹⁹} Here, then, we stand in the wicked day, clad in theocratic armor, sanctified for the sacred warfare in Jehovah’s cause. We are facing the universal war of Armageddon. That will be the most violent and disastrous fight of all human experience. But we shall not need to take part in the violence of that time. From the ancient prophetic pictures of Armageddon come the words of Jehovah to us: ‘The battle is not yours, but God’s.’ ‘Stand firm and see the salvation of Jehovah, which he will perform for you today. . . . Jehovah will himself fight for you.’ (2 Chron. 20:15; Ex. 14:13, 14, NW) Those words are a prohibition against our then dropping our spiritual armor and taking up carnal weapons and relying upon their use for or against anyone on earth at the battle of Armageddon. We must keep our sanctification for our sacred warfare down to the all-out attack upon our New World society by Gog the sovereign prince of Magog and the outbreak of Armageddon by Jehovah’s countermove against him in our defense. (Ezek. 38:1 to 39:22, AS,

margin) Our High Priest Christ Jesus has offered his human sacrifice for us by which we gain a sanctified condition before God for our spiritual conflict. We have consulted the will of God by means of him and have learned that we must 'contend for victory in the right contest of the faith.' (1 Tim. 6: 12, NW) We know we must each prove to be a 'right kind of soldier of Christ Jesus.' He as our High Priest is with us in the camp to counsel us and to encourage us not to fear the enemy but to move forward doing God's will as theocratic soldiers. Our warfare for Jehovah's glory and vindication is a holy warfare, a sacred obligation, a sanctified duty, and our Christian conscience finds no objection to engaging in this theocratic warfare in holy armor, but we eagerly enlist in this service as loyal volunteers.—Ps. 110: 3, AT.

"²⁰ Our camp we must keep clean by living holily, committing no fornication with this enemy world, that Jehovah may see nothing indecent among us and turn away from accompanying us. Clad in the spiritual armor of God, we must continually fight now against the 'wicked spirit forces in the heavenly places,' valiantly wielding the 'sword of the spirit, that is, God's word,' by preaching in all the inhabited earth the good news of God's established kingdom. Then as the decisive battle nears, yes, even as we enter the 'war of the great day of God the Almighty,' we as a 'holy nation' and 'royal priesthood,' together with all our companion warriors of good will from all nations, will be worthy to sing Jehovah's praises and to blow the trumpets for a courageous advance against the foe with full confidence that Jehovah will give us the victory. And as we fight on in support of the preaching of the good news we will

pray fervently in faith for one another and for the success of the divine cause. Then our theocratic warfare will not be in vain. No, but it will be garlanded with God's own victory by Christ and with eternal life in the righteous new world for us as sharers in His victory! (1 Cor. 15: 57, 58, NW) 'The battle is not yours, but God's.'—2 Chron. 20: 15, AS."—*The Watchtower*, November 15, 1954, pp. 701-703, ¶¶ 15-17, 19-20.

The trouble caused to this Court by the erroneous interpretation of the religious beliefs of Jehovah's Witnesses by the respondent calls to mind what counsel stated to this Court on page 2 of his brief for respondent in opposition in *United States v. Taffs*, No. 576, October Term, 1953:

"Taking this case in for review will mean an extensive and unnecessary heresy hearing in this Court on the religious beliefs of Jehovah's Witnesses, which have been made final and unreviewable by this Court through an ecclesiastical determination and the First Amendment to the United States Constitution."

The difficulty of one accustomed to orthodox views to be able to evaluate accurately a strange religion or the religion or the religious views of a minority (especially of a widely hated and despised group like Jehovah's Witnesses) is very well demonstrated by the errors of interpretation of that religion's doctrines, committed by the respondent in its brief. These would have been avoided had respondent observed the command of *United States v. Ballard*, 332 U. S. 78, 85-88 (1944); *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 727, 728-729 (1871); and *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952). It is most unfortunate that respondent has fallen into this miry pit of error.

The wrong construction placed on the religious beliefs of Jehovah's Witnesses by respondent (pages 28-32 in its brief) is the same misinterpretation of the religious beliefs

of Jehovah's Witnesses that was attempted by the Government in its petition for writ of certiorari in *United States v. Taffs*, No. 576, October Term, 1953. (Read pages 12, 14-16 of that petition.) The same misrepresentation of the religious beliefs of Jehovah's Witnesses was challenged in the brief for respondent in opposition, at pages 12-14. This Court denied the writ: 347 U. S. 928 (1954).

Footnote 24 (page 31 of respondent's brief) is incorrect. It leads to the impression that *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329 (certiorari denied 347 U. S. 928 (1954)) and all the decisions following it did not properly appraise the literature misinterpreted by the respondent. It is said that those courts erred when they truthfully found that theocratic warfare in which Jehovah's Witnesses participate is not a real war between nations but is a spiritual war or preaching or legal fighting to preach. The various courts of appeals that have considered the identical literature and the same statements appearing in the conscientious objector form have made the same interpretation of the publications as has petitioner. How can all those courts be wrong and the respondent right? (Read *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329 (cert. denied 347 U. S. 928).) The other courts following it decided *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (pending on certiorari, No. 447, October Term, 1954); *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443; *Shepherd v. United States*, 9th Cir., No. 14,105, Dec. 13, 1954, — F. 2d —; *Ashauer v. United States*, 9th Cir., No. 14,304, Dec. 21, 1954, — F. 2d —; *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —; *United States v. Hagaman*, 3rd Cir., 1954, 213 F. 2d 86; *Bateiaan v. United States*, 9th Cir., No. 13,939, Dec. 17, 1954, — F. 2d —; *Clark v. United States*, 9th Cir., No. 14,176, Dec. 3, 1954, — F. 2d —; *Hinkle v. United States*, 9th Cir., 1954, 216 F. 2d 8 (pending on certiorari, No. 448, October Term, 1954). The first four

of the last above-cited cases following *Taffs* should be read by the Court.

X.

PETITIONER'S BELIEFS NOT QUALIFIED AND HIS RELIANCE UPON INTERFERENCE WITH RELIGIOUS ACTIVITIES ONLY ONE REASON FOR HIS CONSCIENTIOUS OBJECTIONS.

The respondent erroneously states that petitioner's objection is not "objection to war." (See respondent's brief, pages 32 and 35.) This position of respondent ignores that the statutory objection is "to participation in" military training and service. It is not required to be a broad religious objection to war as such. His objection is to training and service and is based on religious training and belief in the Supreme Being. That meets the statute and throws out the erroneous argument of respondent.

Also, respondent wrongly states that the sole basis of petitioner's objection is any service "that will take him away from the time he chooses to devote to his religious activities." (See brief at page 32. It is again stated in a little different way at the bottom of page 35 and at the top of page 36.) This argument of respondent does not present the whole of petitioner's entire objection.

Many other reasons appear in the article from *The Watchtower* appearing as an appendix to respondent's brief, the pages of which shall now be mentioned. The many grounds stated in the appendix to respondent's brief are: (1) conscience instructed in the scriptures, page 58; (2) sermon on the mount, page 58; (3) love your enemies, page 59; (4) no retaliation according to Jesus and Paul, pages 59-60; (5) killing limited to burglary at nighttime, pages 61-62; (6) covenant with God, page 64; (7) belong through ransom to Jesus, who did not enlist in army of Rome, pages 64-65; (8) cannot render to Caesar what belongs to God, page 65; (9) as Jesus said, since no part of this world, cannot fight, pages 67-68; (10) must be un-

spotted from this evil world, page 68; (11) Paul said Christians must even submit to plundering of armies rather than resist by armed warfare, pages 68-69; (12) must claim exemption from military service as did Levites because Christians are modern-day Levites, pages 69-70; (13) Christian ambassadors of God's kingdom are ordered exempt from warfare with nation where sent, pages 71-72; (14) weapons of Christian soldiers engaged in spiritual warfare against demons limited to sword of spirit, the Bible, pages 72-73; (15) brotherhood of witnesses throughout world and cannot kill brothers in other countries, page 74; (16) war requires to hate brothers, which is murder, page 75; (17) obliged to preach and cannot stop it, page 75.

Reasons specifically mentioned by petitioner were: (1) in army of Christ [R. 77]; (2) weapons not carnal; not authorized by Christ to engage in carnal warfare of this world [R. 77, 81]; (3) cannot desert Christ's army for an army of this world [R. 82]; (4) must render unto Caesar what is Caesar's but God's things to God [R. 82]; (5) cannot serve God and man [R. 63]; (6) Jesus' kingdom not of this world [R. 65, 82]; (7) must preach in all the world [R. 63]; (8) must do unto others as you would have them do unto you [R. 63].

After listing the above reasons petitioner told the board: "I am letting you know that I conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service." [R. 82-83]

It is erroneously stated that the court below aptly summarized the above stated reasons. (See respondent's brief, page 32.) The trial court summarized nothing. It merely relied upon petitioner's concluding statement that he opposed civilian work as well as military as a basis for his "objection to any and all obedience to secular authority." [R. 113] The court below not only failed to summarize but also disregarded completely all of petitioner's reasons showing his religious training and belief in the Supreme Being.

Respondent relies upon the decision in *White v. United*

States, 9th Cir., 1954, 215 F. 2d 782; and *Tomlinson v. United States*, 9th Cir., 1954, 216 F. 2d 12. It quotes extensively from the *Tomlinson* opinion on page 34 of its brief. The doctrine of the *White* and *Tomlinson* cases has been specifically limited to cases in which the registrant was classified as a conscientious objector opposed only to combatant service (I-A-O). *White* and *Tomlinson* were thus classified.

The Court of Appeals for the Ninth Circuit has held that where, as here, the registrant has not been classified as a noncombatant conscientious objector but as one liable for unlimited training and service, the opposition to all secular authority is no basis for the classification. (*Franks v. United States*, 9th Cir., 1954, 216 F. 2d 266) This case may well be a *sub silentio* overruling of that part of the opinion in *Tomlinson v. United States*, 9th Cir., 1954, 216 F. 2d 12, quoted in respondent's brief at page 34, even in cases where the registrant is classified in I-A-O. It should be remembered that the holding of the court in *Tomlinson v. United States, supra*, has been challenged by a petition for writ of certiorari pending in this Court.—See No. 391, October Term, 1954; see also petition for writ of certiorari in *White v. United States*, No. 390, October Term, 1954.

The opinions in *White v. United States*, 215 F. 2d 782, and *Tomlinson v. United States*, 216 F. 2d 12, both pending on petitions for writs of certiorari, have been considerably trimmed down by the Court of Appeals for the Ninth Circuit. Nothing is left to the two opinions except the patently erroneous grounds complained of in the petitions for writs of certiorari.—See the Supplemental Memorandum for Petitioner in *White v. United States*, No. 390, October Term, 1954.

In *Hinkle v. United States*, 9th Cir., 1954, 216 F. 2d 8, 10 (pending on certiorari in this Court, No. 448, October Term, 1954), the court found no basis in fact for the denial of the conscientious objector status. The court said that the denial "was not based upon any personal appearance of Hinkle."

The court also (but later) in *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —; qualified its holding in this *White* case. There the court held that because nothing in the memorandum of personal appearance made by the board showed that the credibility of Pitts was questioned by the local board, the case had to be determined by the papers in the file alone. The court said: "We have therefore before us a situation which requires the application of the principle applied in the *Dickinson* case." The court found no basis in fact for denial of the conscientious objector status.

The same holding was made by the court in *Affeldt v. United States*, 9th Cir., No. 13,941, Dec. 14, 1954 — F. 2d —. There the court found no basis in fact for the denial of the conscientious objector status. The court said: "At any rate, nothing about the papers filed by Affeldt or in his personal appearance before the local board, would appear to warrant any finding of insincerity, sham or fakery in his claim that he was conscientiously opposed to participation in war in any form."

More recently, in *Ashauer v. United States*, 9th Cir., No. 14,304, decided December 21, 1954, — F. 2d —, the court held that it was necessary for the local board to show in its memorandum something to indicate a finding of insincerity. The court said: "If anything which occurred at that interview, including Ashauer's demeanor or the manner in which he conducted himself, was inconsistent with or derogative of his avowal of conscientious objection, there is no hint of it in the board's memorandum regarding the interview." The court then relied upon *Dickinson v. United States*, 346 U. S. 389 (1953); *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; and *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (No. 447, October Term, 1954, in this Court). The *Schuman* case, *supra*, was criticized in footnote 4 of the opinion in the *White* case.—See page 26 of the petition for writ of certiorari in *White v. United States*,

No. 390, October Term, 1954; compare *Simon v. United States*, 9th Cir., No. 13,942, Dec. 17, 1954, — F. 2d — (pending on petition for writ of certiorari, No. 526, October Term, 1954).

XI.

FAILURE TO SIGN CONSCIENTIOUS OBJECTOR BLANK.

A big point has been made of petitioner's not signing the Series XIV in the questionnaire, requesting the special form for conscientious objector. (See respondent's brief, page 35.) No inference can be drawn against the petitioner on account of this failure. He explained his reasons. [R. 19] Local Board Memorandum No. 41, issued by the Director of Selective Service System, excused petitioner from signing it. (See petitioner's main brief, pages 28-31.) The respondent is not to regard a registrant before a board as a litigant represented by counsel. (*Berman v. Craig*, 3rd Cir., 1953, 207 F. 2d 888, 891) No claim of waiver because of delay was made by the administrative agency. The giving of the form to him on a belated request and the subsequent consideration of the claim (as though it had been timely made) stops respondent from making anything of the failure to ask for the conscientious objector form in the questionnaire. —*United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210; affirmed on petition for rehearing, 1954, 216 F. 2d 681.

XII.

URGING MINISTRY CLAIM BEFORE CONSCIENTIOUS OBJECTOR CLAIM.

Emphasis is put upon petitioner's giving primary consideration to his ministry claim over and above his conscientious objector claim. This argument is rejected by *Clementino v. United States*, 9th Cir., 1954, 216 F. 2d 10; *Cox v. Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93.

XIII.

COURT OF APPEALS DECISIONS NOT SUBJECT TO CRITICISM MADE BY RESPONDENT.

It is made to appear that the different courts of appeals deciding the cases relied upon by petitioner, criticized by respondent on page 38 of its brief, followed the dissenting view of Mr. Justice Murphy in *Cox v. United States*, 332 U. S. 442, 457-458 (1947).

As will be shown later, the courts of appeals did not do what respondent says. It is significant that no application was made to this Court for a petition for writ of certiorari in the cases where the opinions stated the words "substantial evidence." These statements were inadvertently made. The respondent did not seek a correction of the error that is now complained of by petitions for rehearing or by petition for certiorari.

It is said that the term was used in *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, certiorari denied 347 U. S. 928 (1954). The Court of Appeals did not so hold. At the end of the opinion it is said: "There being no evidence in the record sustaining the finding of the board that appellant was not conscientiously opposed by religious belief to participation in war in any form, its order was void." That court previously quoted from *Estep v. United States*, 327 U. S. 114 (1946): "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."

The same quotation from the *Estep* case is made in *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689. There the Court of Appeals said, at the end of the opinion:

"Since the record is devoid of any evidence sustaining the finding of the board that Annett was not a member in good faith of Jehovah's witnesses, possessed of an honest religious conviction against participation in war, the judgment cannot stand."

In *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, the court cited *Estep v. United States*, 327 U. S. 114, and *Dickinson v. United States*, 346 U. S. 389 (1953). The court then concluded: "Since there is no basis in fact for the I-A classification which was finally given appellant, the order to report for induction was a nullity." It is plain, therefore, that the quoted language (at the bottom of page 38 of respondent's brief) from the lower court that decided this case, saying that these above-mentioned cases were based upon the substantial evidence rule, rather than the no-basis-in-fact rule, is not correct.

The only opinion that is subject to the charge made by the court below and the respondent is *United States v. Pekarski*, 2d Cir., 1953, 207 F. 2d 930. No petition for rehearing was filed by the Government. The respondent made no application for a writ of certiorari to this Court. Even that court used the term "substantial evidence" inadvertently. The words follow immediately after the citation of the case establishing the no-basis-in-fact rule: *Estep v. United States*, 327 U. S. 114. The Court of Appeals, moreover, applied the no-basis-in-fact rule notwithstanding the inadvertent error. The court said that "the local board had no evidence before it to support the classification of the registrant."

The same quibbling attack against these and other opinions was presented by the Government to the Court of Appeals for the Eighth Circuit in *DeMoss v. United States*, No. 15112, decided on December 29, 1954, now pending on appellant's petition for rehearing based on other grounds. The court rejected the contention of the Government. It said concerning *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, as follows:

"If the term 'substantial evidence' as used in the *Jewell* case was used in the same sense of being substantial in comparison with evidence contradictory thereto, in our opinion it would be in conflict with the express direction of the *Dickin-*

son case which states: 'Nor will the courts apply a test of "substantial evidence." ' But if the term is used in the sense that there need be only sufficient factual indication in the record incompatible with the registrant's claim of exemption to prevent the board's order from being legally arbitrary and capricious, the use of the terminology 'substantial' harmonizes with the criterion laid down by the Supreme Court. We place the latter construction on the term where we find it in opinions dealing with this question."

CONCLUSION

For the reasons set forth above, and for those appearing in the main brief, it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

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Brooklyn 1, New York

Counsel for Petitioner

January, 1955.

APPENDIX A

[Excerpt from the *Watch Tower* magazine of January 15, 1918, pp. 24-25.]

REGARDING MILITARY EXEMPTION

Quite a number of our brethren in different parts of the country have been denied military exemption. Some of them, because of their refusal to engage in military service, have been court-martialed and sentenced to long terms in prison, while others are held in detention camps in different parts of the country. Those attending the Convention felt it incumbent upon them to express their love and sympathy in support of these dear brethren who are so loyally standing for the principles represented by our Association; and it was deemed proper to pass a resolution relating to the matter. A committee previously appointed for that purpose reported a resolution on Sunday morning, which was read before the Convention and, upon motion, was seconded and unanimously adopted. The resolution follows:

RESOLUTION

"WHEREAS, under the terms of the Selective Draft Act a number of our members and brethren have been called to military duty, and under the terms and provisions of said Selective Draft Act have made application to the proper authorities for discharge or exemption from military service, which right or privilege has been denied many of them, and they have been and are now forcibly restrained of their liberty in either military prisons or army detention camps;

"AND WHEREAS, we believe our position as a religious organization, which has been organized and existing for many years prior to the passage of said Act, is not fully understood by various officers and representatives of the United States Government, and that it is due and proper that we should make a statement as to the position of this

religious organization that the attitude of our said members and brethren may be better understood;

"NOW THEREFORE RESOLVED: By the members of the INTERNATIONAL BIBLE STUDENTS ASSOCIATION in annual convention assembled at Pittsburgh, Pennsylvania, composed of delegates representing our Association from all of the United States and Canada, that we make the following statement of our said Association or organization concerning our attitude and the attitude of our members toward the present great war:

"FIRST. That we recognize in President Wilson a great man who is using his power and influence honestly and conscientiously and according to his best judgment in the interests of the peoples of the world and particularly of the United States.

"SECOND. That we recognize the duty of every one living within the realms of the United States to be law-abiding; that the Congress of the United States, representing the people of the nation, placed a provision in the Selective Act that no person should be compelled to engage in military service who is a member of a well-recognized religious organization or association whose teachings or principles forbid its members to engage in war, or who are against war in any form; that in taking the position they do, our members are claiming only the protection the law provides against violation of conscience.

"THIRD. That we are followers of the Great Master, Christ Jesus our Redeemer, and have covenanted with the Lord to do His will; and that we are certain that it is not His will that we, as His followers should participate in the great war now upon the earth. We recognize in the present great war one that is different from any other war ever before known, to wit: That it marks the end of the world—that is to say, the end of the present evil order of things—and is purging the nations and preparing the way for the Kingdom of God for which followers of the Great Master, Christ Jesus, have prayed for many centuries; and that for forty

years past this Association has held and taught that the year 1914 would mark the beginning of this great international conflict which the Prophets of the Lord foretold must take place, immediately preceding the establishment of the everlasting Kingdom of Righteousness.

"We agree with President Wilson that there can be no lasting peace while the present unrighteous systems exist.

"FOURTH. We hold that the teachings of Jesus and the Apostles forbid all His true followers to engage in mortal combat or war; that early in the Christian era this teaching was departed from by those claiming to be His followers and that for many centuries past the clergy of both Catholic and Protestant church systems have departed from the teachings of Jesus and the Apostles, substituting therefor man-made doctrines, and have taught the Divine right of kings to rule and that the kingdoms of this earth constitute the kingdom of the Lord, and have mixed the religion of Jesus Christ with the polities of the world, which has resulted in confusion amongst Christian peoples, and which the Lord denounces as Babylon and as an abomination in His sight; that the Lord through many of His holy Prophets foretold that such an alliance would result between civil and ecclesiastical powers on earth which would bring upon both the indignation of God, causing wars, revolutions and anarchy, which would be overruled by Him for the purging of the nations of the earth to the end that He might establish amongst the people a pure and righteous government.

"FIFTH. With charity to all and malice toward none, we feel it our duty humbly to call attention to the fact that the nations are now passing through that great crisis foretold by the Prophets of the Lord, and that God is expressing His displeasure toward the relationship existing between ecclesiastical and civil kingdoms of the earth, particularly as set forth in the following cited Scriptures, to wit: Revelation, chapters 17 and 18; Ezekiel, chapter 34.

"SIXTH. That sincerely believing such to be true, a participation by our members in this war would be contrary

to the Lord's will and a violation of our own conscience which would put in jeopardy our eternal destiny and welfare. While we hold that it is the privilege of any and all persons to engage in war who desire to do so if they are not followers of Jesus Christ, yet we hold that they who do follow faithfully in His footsteps cannot consistently participate in war in any form; and we have so held for more than thirty years.

"SEVENTH. We, therefore, enter our solemn protest against the incarceration of our brethren and members in prison because of the refusal on their part to violate their conscience and to violate the law of God; that we respectfully call upon the officials of the Government of the United States to recognize that the members of our Association come clearly within the purvue and terms of the exemption clause of the Selective Draft Act because of the teachings and principles of this religious Association, which principles and teachings have been held and taught by it and its members for more than a quarter of a century; and that we respectfully petition and ask that our said brethren and members, to wit:

Herm. Abraham, Holyoke, Mass.
 Martin O. Bowin, Camp Upton
 Harold Bruber, Camp Dodge
 A. W. Christy, Jr., Camp Upton
 Elmer Christy, Camp Upton
 Jerry De Cecca, Camp Devens
 Stanley Dixon, Camp Bowie
 Frank Donogrio, Camp Dix
 Charles Feldner, Camp Meade

Charles H. Walker, Camp Zachary Taylor

Joy Ferguson, Camp Upton
 Stanley Olson, Camp Grant
 George Ruiz, Camp Upton
 Walford Marker, Seattle, Wash.
 Walter Moze, Camp Upton
 J. A. Mureh, " Zachary Taylor
 Camelo Nieita, Camp Deven
 S. Papageorges, Duluth, Minn.
 H. Pound, Camp Zachary Taylor

and others, be fully granted the provisions of the exemption clause of the Selective Draft Act as provided by Congress.

"That a copy of this Resolution be furnished to the President of the United States, to the Secretary of the War Department and the Provost Marshal General Crowder; and that the President of our Association appoint a committee of three to so present these resolutions."

PRESENTED TO PRESIDENT WILSON

Brother Rutherford, as President, thereupon appointed Brother Dr. Smith of Louisville, Ky., Brother E. D. Sexton, of Los Angeles, California, and Brother E. W. Brenneisen, of New York City, as a committee of three to bear these resolutions to Washington and there in person present them to President Wilson, Secretary Baker of the War Department, and a copy to Provost Marshal General Crowder. The Committee proceeded to Washington for this purpose, and on Friday, January 11th, they were granted an audience with President Wilson. The Committee was very kindly and graciously received by the President who patiently listened to the reading of the resolution. The President expressed himself as fully sympathizing with our position. He suggested that some had exceeded their authority in dealing with our brethren and promised that these mistakes should be speedily rectified. Afterwards a copy of the resolution was presented to Secretary of War Baker and Provost Marshal Crowder.

What effect this resolution may have we cannot of course know, but it is our hope that much good may result. While our brethren are refusing to render military service they are not doing so because of any desire to be against the Government but because they are conscientious and believe that for them to engage in this great war would be to forfeit their share in the Kingdom of our Lord and Saviour Jesus Christ. Having made a consecration to be dead with Christ, all such count not the present life dear unto themselves. They desire above all things to be pleasing to the Heavenly Father and to do His will completely.

For the encouragement of our dear brethren in bonds we remind them of the great afflictions endured by the faithful ones of the past as recorded by the Apostle Paul in Hebrews 11. Those men proved their loyalty and faithfulness to God, and because thereof they will have a better resurrection than the world in general. Now some of His

dear children are having the privilege of proving their loyalty under somewhat similar circumstances, and if faithful, will have the privilege, together with the King of Kings and Lord of Lords, of reconstructing the world of mankind which is now engaged in the destruction of each other. What a blessed privilege that will be!

APPENDIX B

[The booklet *Neutrality* accompanies this reply brief and is marked as Appendix B.]

APPENDIX C

[This is a copy of an original letter handed by the General Counsel for Jehovah's Witnesses to Mr. L. C. M. Smith, Assistant Attorney General, Washington, D. C., in October of 1940. It was published in *Consolation* magazine, October 30, 1940, pp. 24-30.]

An Important Letter to the Department of Justice

Department of Justice,
Attention Mr. L. C. M. Smith,
Assistant to the Attorney General,
Washington, D. C.

Dear Sir:

On the 4th inst. you requested me to come to your office at Washington and confer with you relative to Jehovah's witnesses and their relationship to the Selective Draft and to furnish you with information which the Department desires. To be sure, I shall be glad to co-operate with your office in any way I can. I am the legal counsel for some of Jehovah's witnesses but I am not well qualified to furnish you with the desired information; accordingly I have obtained from the official publishers for Jehovah's witnesses

the information which I believe you desire and I submit the same as you have requested, to wit:

The WATCH TOWER BIBLE & TRACT SOCIETY was incorporated under the laws of the State of Pennsylvania in 1884. The purpose of that organization is as stated in its charter, a copy of which is attached. In 1909 the PEOPLES PULPIT ASSOCIATION was incorporated under the laws of the State of New York, the name of which was afterwards changed to the WATCHTOWER BIBLE AND TRACT SOCIETY, INC.

The INTERNATIONAL BIBLE STUDENTS ASSOCIATION was incorporated in 1914 under the laws of Great Britain. The purpose of the three above-mentioned corporations is exactly the same. The officers are practically the same. The three corporations named are publishers for Jehovah's witnesses. They print and manufacture literature used by Jehovah's witnesses, and which publications are issued in about eighty different languages and dialects. All members and officers of the corporations above mentioned are Jehovah's witnesses and all have one objective and purpose.

'Jehovah's witnesses as such are not a corporation, for the obvious reason as appears from the facts relating thereto. Jehovah's witnesses form a part of the organization of Almighty God, whose name alone is Jehovah. [Note: In furnishing this information the informant cites the Bible scriptures as authority for making such statement.] No earthly body of people could have the control of Jehovah's witnesses; for the reason, they are all under the immediate control of the Lord of heaven and earth. Jehovah's witnesses, therefore, are not such an organization over which any man could have and exercise control. The responsibility of Jehovah's witnesses is first to Him, the Almighty God, and each individual is responsible for his own acts. The guide for each one of Jehovah's witnesses is God's word recorded in the Holy Bible. "Sanctify them through thy truth; *thy word is truth.*" (John 17:17) "Thy Word is a lamp unto my feet, and a light unto my path." (Psalm 119:105) "I will instruct thee, and teach thee in the way

which thou shalt go; I will guide thee with mine eye." (Psalm 32:8) "Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths."—Proverbs 3:5, 6.

The Head and Chief of Jehovah's witnesses is the Lord Jesus Christ, who is otherwise known in the Scriptures as the Logos. Another title of Jesus is "The Faithful and True Witness", the beginning of creation. (Revelation 3:14; Revelation 1:5) Jehovah God selects His own witnesses, and this selection began by His selecting of Abel. A list of the faithful men who are witnesses for Jehovah appears in the Bible at Hebrews the eleventh chapter. Those faithful men are cited as examples to be followed by all other witnesses of the Almighty God and concerning which it is written: "Wherefore seeing we also are compassed about with so great a cloud of witnesses, let us lay aside every weight, and the sin which doth so easily beset us, and let us run with patience the race that is set before us, looking unto Jesus the author and finisher of our faith; who, for the joy that was set before him, endured the cross, despising the shame, and is set down at the right hand of the throne of God."—Hebrews 12:1, 2.

A person becomes a witness for Jehovah, according to the Scriptures, in this manner, to wit: By an unconditional agreement or covenant, otherwise called consecration, to do the will of Almighty God, and hence to follow in the footsteps of Christ Jesus: "Then said Jesus unto his disciples, If any man will come after me, let him deny himself, and take up his cross, and follow me."—Matthew 16:24.

The purpose of Jesus Christ in coming to the earth He states in these words: "To this end was I born, and for this cause came I into the world, that I might bear witness unto the truth. Every one that is of the truth heareth my voice." (John 18:37) All persons who do enter into a contract or covenant to do the will of Almighty God are called to 'follow in the footsteps of Christ Jesus' (1 Peter 2:21);

that is to say, they are to do as Jesus does.

'The witnesses of Jehovah are collectively the body of the organization formed by the Almighty God and over which Christ Jesus is the appointed Head and Chief. No man or body of men selects these witnesses; for the reason, they are witnesses of the Almighty God, selected, commissioned and commanded by Jehovah to bear testimony to the truth of God's purpose. That no man has any power or authority to select and appoint Jehovah's witnesses it is written in the Bible: 'Now hath God set the members every one of them in the body, as it pleaseth him.' (1 Corinthians 12: 18) The organization of Jehovah's witnesses is therefore the organization of Almighty God, and not that of man. That they are responsible first to Almighty God is plainly stated in the Scriptures. (Romans 14: 4) Jehovah God and Christ Jesus are the "Higher Powers" to whom every one of Jehovah's witnesses must be obedient. (Romans 13: 1) The monarch, president, leader, dictator or other head or heads of an earthly government are in no sense the higher powers mentioned in the foregoing scripture.

'A state or nation of the earth is an organization formed by men for the government of men. The officers thereof are not the higher powers to those who have become the servants of Almighty God. When the law of a worldly nation or a state conflicts with the expressed law of Almighty God the man who is a witness of Jehovah must obey God's law first because he is in a solemn covenant to be obedient to God's law. It is the duty of a person, however, residing within a state or nation to obey the laws of the land that are not in conflict with God's law. Any rule or law that requires a person who is in a covenant to do God's will and who is therefore a witness of Jehovah to do or perform that which Almighty God expressly commands he shall not do is in conflict with the law of Almighty God. For this reason Jesus states the rule governing Jehovah's witnesses: "Render therefore unto Cæsar [the state] the things which be Cæsar's, and unto God [the Almighty, Jehovah] the things

which be God's." (Luke 20: 25) Such is and must be the guide of every one who is the follower of Christ Jesus and who therefore is a sincere and faithful witness of Jehovah. The apostles of Jesus, who were witnesses of Jehovah, under inspiration of God interpreted this rule with these words: "We ought to obey God rather than men." (Acts 5: 29) That same rule necessarily applies to every person who has entered into a solemn covenant to do the will of Almighty God and who therefore has become a witness of Jehovah.

'Purpose

'What is the purpose of Jehovah's witnesses? Not to convert the world, because that is an impossibility and it is not their God-given commission. Their purpose and commission is to bear testimony before the peoples of the world that Jehovah is the ALMIGHTY GOD and that His purpose is to set up in full operation *THE THEOCRACY*, which shall rule the world in righteousness and bless with life everlasting, peace and happiness all persons who are obedient to that THEOCRATIC rule. *THE THEOCRACY* is the government of the world under the command of Jehovah God by and under the immediate direction of Christ Jesus the King. The commission and purpose of Jehovah's witnesses, therefore, is to proclaim or transmit this vital information to all persons who will hear the testimony from Jehovah's Word, the Bible. They have no power and no desire to compel anyone to hear or to join themselves to anything. They are merely witnesses transmitting the message of the Almighty God. All such sincere, devoted persons to Jehovah, who are in a covenant to do His will and who have been accepted by Him as such servants, are ordained ministers or witnesses of Almighty God; and since God ordains them, that is the highest ordination or authority that man could have, and such ordination is contained in the following specific rule of the Most High, as set forth in the Bible: "The spirit of the Lord God is upon me; because the Lord

hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn." (Isaiah 61:1, 2) The ordination given by any earthly organization to a person can merely authorize that person to represent the corporate body or organization issuing such authority.

THE THEOCRACY is the kingdom of JEHOVAH GOD, the ALMIGHTY, and this fact is stressed repeatedly in the testimony of Christ Jesus and who is the Anointed KING. At the time of the beginning of His earthly ministry He said: "The Kingdom of Heaven is at hand," meaning that Jesus himself, being the appointed and anointed King by Jehovah, was then present. His testimony, given over a period of more than three years, repeatedly emphasized the Kingdom of God as that which is of greatest importance to man because it is the means of man's salvation to life and the means of the vindication of Jehovah's great name.

'Jesus commanded all of His followers to continuously pray for the coming of God's Kingdom, which will vindicate God's name and bless all obedient ones of men, and therefore He said: "After this manner therefore pray ye: Our Father which art in heaven, Hallowed be thy name. Thy kingdom come. Thy will be done in earth, as it is in heaven." (Matthew 6:9, 10) For this reason Jesus told the Roman governor: 'I am the King and to this end was I born.' All of Jehovah's witnesses since the time Jesus was on earth till now, that is, all the sincere followers of Christ Jesus, have thus prayed to God with hope, looking for the coming of His Kingdom, when righteousness shall prevail in all the earth.

The prophecies of the Bible, and the corroborating facts, show that Jehovah God enthroned His King, Christ Jesus, in the year A.D. 1914 and sent Him forth to begin His reign while the enemy Satan still operates in the earth.

(Psalm 110:1, 2) The great prophecy set forth in the twenty-fourth chapter of Matthew shows that the beginning of the reign of Christ would be accompanied by the world war, famine, pestilences, distress of nations with much perplexity. All of such things have come to pass or are now in course of fulfillment. For this reason Satan knows that he has but a brief space of time until Armageddon, the final conclusion of the controversy between him and the Almighty God, and therefore it is written: "Woe to the inhabitors of the earth, and of the sea! for the devil is come down unto you, having great wrath, because he knoweth that he hath but a short time."—Revelation 12:12.

Jehovah's witnesses must declare these facts to the people in order that the people who desire righteousness and peace may learn that God's kingdom under Christ is the only hope for lasting peace and life everlasting for human creatures. Such rulers of nations as dictators, Nazis, Fascists and the like, are all against Jehovah God and His kingdom under Christ. Therefore Jehovah, addressing His faithful servants who have made a covenant to do His will, says: "Let all the nations be gathered together, and let the people be assembled; who among them can declare this, and shew us former things? let them bring forth their witnesses, that they may be justified; or let them hear, and say, It is truth. YE ARE MY WITNESSES, SAITH THE LORD, and my servant whom I have chosen; that ye may know and believe me, and understand that I am he; before me there was no God formed, neither shall there be after me."—Isaiah 43:9, 10.

This command must apply to every person who is in a covenant to do the will of Almighty God. For that reason those persons now on the earth and known as JEHOVAH'S WITNESSES must continuously bear testimony of and concerning Jehovah God, His kingdom, and His name, and this they must do in obedience to His commandments. Of necessity the testimony of God's Word exposes the iniquity of this world. Satan the enemy of God, and all of his servants there-

fore, attempts to destroy Jehovah's witnesses, whose sole protection is Jehovah God and His King.—Revelation 12: 17.

'Only such persons of good will toward God need to expect the favor and blessings of the Most High. When Jesus was sent to earth Jehovah's angels authoritatively made this announcement: 'Glory to God in the highest, on earth peace to men of good will.'—Luke 2: 14, *Rotherham*.

Jehovah's witnesses must of necessity be separate and distinct from the world because they are the ambassadors and representatives of God's kingdom on earth, bearing testimony as such ambassadors of and concerning Jehovah and His kingdom. (2 Corinthians 5: 20) They must inform the people that THE THEOCRACY is the only means of bringing peace to the nations of earth, as it is written concerning the King, Christ Jesus, the Prince of Peace: "The government [THE THEOCRACY] shall be upon his shoulder; and his name shall be called Wonderful Counsellor, The mighty God, The everlasting Father, The Prince of Peace. Of the increase of his government and peace there shall be no end, upon the throne of David, and upon his kingdom, to order it, and to establish it with judgment and with justice, from henceforth even for ever. The zeal of the Lord of hosts will perform this." (Isaiah 9: 6, 7) These truths are, of course, important to the peoples of earth, particularly at the present time.

***Number**

'How many are in the company of Jehovah's witnesses? No man can answer that question; for the reason, no man knows. For many centuries God has been selecting His witnesses and giving them opportunity to prove their complete faithfulness to Him and to receive His everlasting blessing. Today the world has reached the greatest crisis of all time and the world is now torn with strife by reason of unrighteousness. This is exactly as the Lord foretold it would be at the time of the coming in of His kingdom, and

concerning which all of His witnesses were commanded to pray. For this reason the Lord gave His servants and witnesses this further commandment: "And this gospel [good news] of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." —Matthew 24:14.

'In this troublesome time millions of persons have heard and are still learning the truth of the Bible of and concerning God's Kingdom. The WATCHTOWER SOCIETY and its kindred societies above named, which are publishers for Jehovah's witnesses, have placed in the hands of the peoples of earth more than three hundred million volumes of books, published in eighty or more languages and distributed amongst the peoples and nations of the earth. The number of persons showing a deep interest in learning of God's Kingdom daily increases. Since no man or organization has authority to keep a roll showing who are or who are not Jehovah's witnesses, there is none such kept. That no man can now tell how many of Jehovah's witnesses are in the earth note the following spoken by God's prophet: "I beheld, and, lo, a great multitude, which no man could number." (Revelation 7:9) The aforementioned societies or corporations that do the publishing for those who are witnesses for Jehovah have no record of the number of such persons who have entered into a covenant to do the will of God; but from the evidence that appears there must be a great number of such persons who are of good will toward God and His kingdom and who have devoted themselves to Him and His service. These devoted ones are to be found in every nation of earth.

'War

'Do Jehovah's witnesses participate in the wars between the nations of the world? How could one who is wholly devoted to Almighty God, and to His kingdom under Christ Jesus, take sides in a war between nations, both of which are against God and His kingdom? Those persons who are

wholly devoted to God and His kingdom are separate and distinct as a nation from the other nations, and, as stated by the Scriptures, their citizenship is in the heavenly organization (*Philippians 3:20, Diaglott and Weymouth translations*) Concerning such witnesses of Jehovah the Most High it is written in the Bible: "But ye are a chosen generation, a royal priesthood, an holy nation, a peculiar people; that ye should shew forth the praises of him who hath called you out of darkness into his marvellous light." (*1 Peter 2:9*) Their commission and their work is to show forth the praises of Jehovah God and His kingdom and the blessings that such righteous rule will bring to the obedient ones of the peoples of earth.

'No government of the earth is in favor of Jehovah's kingdom under Christ Jesus, but all are against it. No government is advocating the establishment of God's kingdom of righteousness, and hence all are against that Kingdom, as Jesus declares: "He that is not with me is against me." (*Matthew 12:30*) It is written concerning earthly governments, and the people who hold to such, and who indulge in unrighteousness: "The whole world lies under the evil one." (*1 John 5:19, Diaglott*) How then can one who is wholly devoted to Jehovah God and to His kingdom take the side of one nation warring against another nation and indulge in killing his fellow man, and particularly where both such warring nations are against Jehovah God and His King, Christ Jesus? God's Word expressly prohibits and forbids His witnesses to thus indulge in war between the nations of earth. That it is the will of Almighty God, Jehovah, and of His King, Christ Jesus, that Jehovah's witnesses shall not engage in war between the nations of earth and that they are forbidden to so engage therein, the following is cited from the Scriptures, and which is addressed specifically to those consecrated persons who follow in the footsteps of Christ Jesus, to wit: "For though we walk in the flesh, we do not war after the flesh: (for the weapons of our warfare are not carnal, but mighty

through God to the pulling down of strong holds)."—2 Corinthians 10:3, 4.

'Neutrality'

The position and attitude of Jehovah's witnesses is set forth in the Bible, and is stated in *The Watchtower* published in 1939 in an article under the title "Neutrality", a copy of which article is appended and made a part of this statement.

The entire Bible record and Bible history shows that every one of Jehovah's witnesses from Abel to the present time has refused to take sides and fight for or against a nation that is against God's kingdom. That does not mean that such followers of Christ Jesus are pacifists. Jesus declared that His followers would fight for His kingdom. (John 18:36) Abraham, one of Jehovah's witnesses, was entirely neutral as to the kings of the nations of his time. When those nations entered into war he remained aloof from them and entirely neutral, but when one of those warring nations assaulted Lot, his fellow servant of God, Abraham fought against that nation and delivered Lot, his fellow servant. The Bible record at Hebrews the eleventh chapter shows that all of the faithful men there mentioned with approval were neutral as to controversies between nations, and were entirely and wholly devoted to Almighty God. This point is fully covered in the *Watchtower* article published concerning neutrality, as above stated, a careful reading of which should make clear the position of Jehovah's witnesses now on the earth.

'Declarations'

From the time that the aforementioned corporations have acted as publishers for the witnesses of Jehovah these publications have repeatedly announced the fact that the servants of Almighty God, Jehovah's witnesses, decline to indulge in war between that nations because to do so is against God's commandment, violative of the conscience

of the servants of God, and would lead to the destruction of such servants by Jehovah himself. Some of those Resolutions thus published are attached hereto and made a part of this statement.

'Selective Draft

'Will the WATCH TOWER BIBLE & TRACT SOCIETY and kindred corporations above named, or any organization or body acting with them, oppose the Selective Draft Act recently passed by Congress? Most emphatically, No; because such is not the prerogative of the Societies named. Claiming exemption from military duty or service by conscientious objectors is an individual matter with each one of Jehovah's witnesses because each one must himself determine whether or not he is wholly devoted to Jehovah God and His Kingdom. The Word of Almighty God expressly forbids any and all persons who are in a covenant to do His will, and who are therefore His witnesses concerning His name and His kingdom, to engage in war on behalf of any nation (or nations) which nation is against the Kingdom of Almighty God. It is an individual matter, however, for each person to determine his devotion to Jehovah and His kingdom, or whether he is a part of this world. The Word of the Lord God Jehovah is higher than the word or commandments of any earthly organization. These commandments are given to such conscientious, faithful servants of Jehovah God: "Keep [yourselves] unspotted from the world." (James 1: 27) "They are not of the world, even as I am not of the world. Sanctify them through thy truth: thy word is truth." (John 17: 16, 17) "These things I command you, that ye love one another. If the world hate you, ye know that it hated me before it hated you. If ye were of the world, the world would love his own; but because ye are not of the world, but I have chosen you out of the world, therefore the world hateth you." (John 15: 17-19) "Love not the world, neither the things that are in the world. If any man love the world, the love of the

Father is not in him." (1 John 2:15) In order for one to prove his love for God and His kingdom he must be a witness to Jehovah's name and His Kingdom in this day of great crisis in the world, as it is written: "Herein is our love made perfect, that we may have boldness in the day of judgment; because as he is, so are we in this world. There is no fear in love; but perfect love casteth out fear; because fear hath torment. He that feareth is not made perfect in love."—1 John 4:17, 18.

'Punishment'

'Would it not be better for Jehovah's witnesses to willingly take non-combatant service in the army and serve there rather than to be incarcerated in prison for refusing to do so? That is a question that each individual must answer for himself. No man or earthly organization has any right to answer for another. If any man desires to enter the military for combatant or even non-combatant service, that is for him to decide and for no one to attempt to influence him. God's Word must be his guide, together with his conscience. The very worst punishment that could be inflicted upon any person by any worldly power is death. Those who fear God but who do no fear man thereby prove their love for God and are assured of His final blessing. For one who has made a covenant to do the will of God and has become a witness for Jehovah, and who for fear of man power breaks his covenant with God is certain to suffer eternal destruction; as it is written: "And fear not them which kill the body, but are not able to kill the soul; but rather fear him which is able to destroy both soul and body in hell."—Matthew 10:28.

'The responsibility for inflicting punishment upon persons who because of their devotion to Almighty God refuse to engage in war or military service rests upon the person or persons who cause such punishment to be inflicted, and their responsibility is to the Most High. The prophet Jeremiah was a faithful one of Jehovah's witnesses because

he stood firmly for the truth of God's kingdom and declared the same openly and boldly. He was imprisoned and threatened with death, and to his accusers Jeremiah replied: "As 'or me, behold, I am in your hand; do with me as seemeth good and meet unto you; but know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon yourselves, and upon this city, and upon the inhabitants thereof; for of a truth the Lord hath sent me unto you to speak all these words in your ears." (Jeremiah 26: 14, 15) Because he put his trust wholly in Jehovah God the Almighty preserved him alive. Let those who have to do with conscription and the infliction of punishment consider well their own responsibility before inflicting punishment upon one who conscientiously serves Jehovah as His servant and witness, and because that person insists on faithful obedience to God rather than to man.

'In this hour of great distress upon the nations of earth Jehovah's witnesses are engaged solely in bearing testimony before the people that Jehovah is the Almighty, the true God, and that His kingdom under Christ Jesus, called THE THEOCRACY, is the only hope of complete deliverance, peace and life everlasting. Those who thus faithfully perform their covenant with God, and who are His servants and hence His witnesses, being selected by Him, are called His "elect". God will see to it that violence done to His elect shall not go unpunished; as it is written: "And shall not God avenge his own elect, which cry day and night unto him, though he bear long with them? I tell you that he will avenge them speedily. Nevertheless, when the Son of man cometh, shall he find faith on the earth?"—Luke 18: 7, 8.

'Those who deny God because of fear of men, and thereby expect to escape punishment, shall have no resurrection from death but must remain dead forever. Those who remain faithful and true unto Jehovah God and His kingdom, even unto death, trusting wholly in God and His kingdom, are promised instantaneous resurrection from death to life everlasting. (1 Corinthians 15: 15-57) "Be

thou faithful unto death, and I will give thee a crown of life.”—Revelation 2:10.

‘Jehovah’s witnesses are not following the theories, or teachings, or commandments of men or any company or organization of men. They take their orders and commandments only from God, as set forth in His Word. They follow the Lord Jesus Christ, Jehovah’s Chief Witness, and they are compelled to be fully obedient to the commandments of Almighty God if they would receive life everlasting, which blessings Jehovah God alone can give, through Christ Jesus.—Romans 6:23.

‘Neither the WATCH TOWER BIBLE & TRACT SOCIETY nor its kindred corporations above mentioned, nor any officers or servants thereof, will undertake either directly or indirectly to interfere with Selective Draft of persons into the military service. That Jehovah’s sincere witnesses are conscientious objectors, duly entitled under the law to military exemption, is clear, but each individual must for himself determine whether or not he will claim exemption and should act upon the advice of no human creature or body of men; as it is written in the Scriptures: “Behold, God is my salvation; I will trust, and not be afraid; for the LORD JEHOVAH is my strength and my song; he also is become my salvation.”—Isaiah 12:2.

‘Ordination of Ministers’

‘The primary ordination of any person as a minister of God and Christ to preach this gospel of the Kingdom is given by the Lord himself, as it is written in His Word: “The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn.”—Isaiah 61:1, 2.

Every person who has exercised faith in the shed blood

of Christ Jesus as the Redeemer of man, and who has made a full and unreserved covenant to do the will of Almighty God as a follower of Christ Jesus, and who then devotes himself faithfully and sincerely to the worship and active service of God and His King, Christ Jesus, is recognized by the aforementioned Society and body of Jehovah's witnesses to be an ordained minister of God and Christ, who is duly authorized to preach this gospel of the Kingdom of God. Such person so recognized receives authority to represent the aforementioned Society as a minister and as a witness for Jehovah to preach this gospel of the Kingdom, and this constitutes the human ordination of such person. To each of said persons so ordained there is issued and delivered an identification card showing that the person bearing the same is an ordained minister of the gospel.

'Divinity Schools'

'Not only is the WATCH TOWER BIBLE AND TRACT SOCIETY the publisher for Jehovah's witnesses, but for more than fifty years that Society has had and maintained schools for the instruction of students in the Divine Word, the Holy Scriptures, and daily and regularly at its headquarters it gives personal instruction, and instruction by correspondence, to students of the Divine Word as recorded in the Bible. In addition thereto the said Society has and maintains companies or branch schools in many towns and cities, and which companies or schools are under the immediate direction of competent instructors, elders and ministers and servants, who regularly each week of the year give instruction in the Divine Word, the Bible, and all persons who have covenanted to do the will of Almighty God, and who desire to attend and do attend, are permitted to receive instruction at such schools free of charge.'

I am sure the above statement of the position of Jehovah's witnesses relative to military service is far more explicit than I could make it, and I submit it for your

consideration. I hope this is a compliance with your request.

Dated

October 9, 1940.

[Signed] HAYDEN C. COVINGTON

APPENDIX D

[The book *The New World* accompanies this reply brief and is marked as Appendix D.]

APPENDIX E

[The November 15, 1954, issue of *The Watchtower* accompanies this reply brief and is marked as Appendix E.]